

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7723 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? NO

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?  
NO

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DAYABHAI NAGARJIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR MI HAVA for Petitioner

MS.PREETI S.PARMAR ADDL. GOVERNMENT PLEADER

for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/10/96

ORAL JUDGEMENT

The petitioner, by this petition, calls in question the order dt. 19th June 1989 passed by the Chief Secretary, Revenue Department, Gujarat State, reducing the exclusion of the land made by the Competent Authority under the Urban Land Ceiling Act (for short "the Act), and prays for issuance of writ in the nature of certiorary etc.

2. After the Act came into force, the petitioner filled in a Form under Sec.6(1) and declared his holdings. As per the declaration made, his holdings were as follows:-

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Sr.No.	Name of village	S.No.	Area Sq.Mts.	Use thereof
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1.	Puna	184/1	10522-00	agri.
2.	"	590/3	8600-00	"
3.	"	591/7	3035-00	"
4.	"	175/1	4148-00	"
5.	"	266/2	14265-00	"
6.	"	House No.18	264-00	Resi.
7.	"	Kodharu No.17	218-00	Kodhara
8.	Dubhal	55 Paiky	9915-00	Agri.
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			50967-00	TOTAL
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Thus he declared that his total holdings were to the tune of 50,967 sq.mts. of land. Undergoing necessary formalities under Secs. 8 and 10 of the Act, the Competent Authority reached the conclusion that the first five holdings stated hereinabove falling within the agricultural Zone were required to be excluded from the consideration of the holdings. A cattle shed admeasuring 218 sq.mts was also required to be totally excluded as the same was constructed prior to 1976. The land covered by the House No.18 having admeasuring 264 sq.mts. was however not excluded but was included while computing the holdings of the respondents. The land bearing Survey no.55 Paiky is situated within the local limit of village Danbhal. It was having the total area of 9915 sq.mts. Out of its total area, 854 sq.mts of land was excluded as overhead High Tension Line was passing through the land and on that land as per Rules, no construction was permitted. The Competent Authority also found that 130 sq.mts. of land on which Farm House was erected, was required to be excluded. Likewise 33.11 sq.mts. of land where there was a well and Electric Room with Motor Engine was also excluded from computation. As per the Guidelines issued by the SUDA certain land was required to be kept open which on calculation, came to 242 sq.mts of land. Further 500 sq.mt. of land being appurtenant land was not to be taken into account. As the road is passing touching the land, the side Margin land was to be kept out of computation, the area of which was assessed at 922.65 sq.mts. Through that land, the Canal is

passing, as a result, 2438.40 sq.mts. of land was also excluded as no construction on that land is permissible. Thus the Competent Authority, in all, excluded 5,120.16 sq.mts of land, out of the total area of Survey no.55. When computation was accordingly made, the land admeasuring 4,389.84 sq.mts remained on hand for being taken into account qua ceiling limits. In that area of the land, the area of 102 sq.mts. of land covered by the House No.18 situate within the local limits of Puna village was added. According to the Competent Authority, therefore, the total area to be taken into account came to 4401.84 sq.mts. The petitioner has two sons and they were on that day major. In all therefore, the area equivalent to three Units was required to be deducted from the above stated area. Each Unit was entitled to hold 1500 sq. mts. of land and therefore, 4500 sq.mts of land was to be deducted, out of the total area of 4401.84 sq.mts. The Competent Authority, therefore, found that the petitioner was having no excess land under the Act, and therefore, he ordered to file the Form filed under Sec.6(1) of the Act. Such order came to be passed after the Government sent the matter back reviewing under Sec.34 of the Act. It may be stated that initially order was passed on 15th December, 1984 by the Competent Authority holding that the petitioner was having no excess land. After the above said order came to be passed, the Government under Sec.34 of the Act reviewed the same holding that instead of excluding the total area 863.11 sq.mts of land with regard to the Farm House, in all 323 sq.mts. of land ought to have been excluded. The Joint Secretary, Revenue Department, Gujarat State, therefore, held that exclusion of 883.11 sq.mts. of land was erroneous. He, therefore, included the said area in the total holdings of the petitioner. Likewise he also included 922.65 sq.mts. of land as the road margin land because according to him, it was also erroneously excluded by the competent authority. At last, he reached the conclusion that in all the total holdings of the petitioner was 5,993.38 sq.mts. of land, out of which the land equivalent to three units namely 4500 sq.mts. of land was required to be deducted. When that was done, 1493.38 sq.mts. of land was in excess of the ceiling limits. He, therefore, directed the competent authority to proceed further accordingly issuing final statement and affording the parties reasonable opportunity to submit. Being aggrieved by that order, the petitioner has preferred the present petition.

3. According to the petitioner, the Joint Secretary ought not to have interfered with the order passed by the competent authority which was perfect and quite in

consonance with law. He erred not only by including the road margin area, but also the area of the House No.18, as well as the total area of the Farm House for the purpose of computation of the holdings. The order passed by the Joint Secretary was not only erroneous qua computation of holdings but was also bad as no reasons were assigned. On behalf of the respondent, Miss. Priti S.Parmar, the learned AGP supported the order of the Joint Secretary and urged to reject the petition.

4. Under the Act, when the authority has to pass an order hearing the parties, he acts as quasi-judicial authority and therefore, it is incumbent upon him to pass a reasoned order. Under Sec.34 of the Act, the Secretary or Joint Secretary exercising the powers of revision is the quasi-judicial authority and the powers, he exercises are quasi-judicial in nature. Hence the authority exercising powers u/s. 34 is required to pass the reasoned order. If that is not done, the order cannot be sustained. This is a well settled principle of law which has been reiterated in the decision of the Supreme Court rendered in the case of The Seimens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India and Another reported as (1996) 3 SCC 690, Relying upon the decision of the Supreme Court in the case of the Seimens Engineering (supra), this court, when came across with likewise question in Special Civil Application No. 6495 of 1990, held that the order, passed by the Government while exercising the powers under Sec. 34, was bad in law, as no reason was assigned, and so the order was struck down and the matter was remanded to the Government for a fresh consideration. A similar question also arose before this court in Special Civil Application No. 3948 of 1988, and Special Civil Application No. 7983 of 1989 wherein likewise view is taken. Despite the above stated pronouncements. in this case, the Joint Secretary, while passing the impugned order, over-looked law laid down and passed the order without assigning any reasons. He has on Page 4 of his judgment, a copy of which is produced at Annexure C, simply stated that the competent authority was not right in excluding particular area of land so far as the Farm House and Road Margin Land was concerned. He has not specifically stated how finding arrived at about the area not included for the purpose of computation by the competent authority was not just and legal. Simply to say without any reason that it was not just and proper on the part of the competent authority to include or exclude a particular area is not sufficient. The order passed is, therefore, the order without assigning any reason. When that is so, in view of the law made clear by the above said decisions, the

order passed has to be struck down.

5. A copy of the order passed by the competent authority is produced at Annexure A. On going through that order passed with meticulously care and finicky details, I see no good cause to hold that it has been rightly upset by Govt. I fully agree with the reasoning of the competent authority and conclusions he reached. When I am in general agreement with the competent authority, it is not necessary for me to restate all those reasons. Suffice it to say that the competent authority rightly excluded the land while computing the holdings of the petitioner; but it may be stated that he fell into error in not excluding the total area of the land covered by the construction of House No.18 which came to 264 sq.mts. In view of the decision of the Apex Court in the case of Meera Gupta Vs. State of West Bengal, AIR 1992 SC 1967, area of the land covered by the construction of a house has to be excluded from the holdings. Hence out of the total area of 50,967 sq.mts. if the areas as mentioned hereinbelow as required in law, are excluded, in fact, nothing surplus will remain on hand :-

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Area Sq.Mts. Use thereof  
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184/1	10522-00	agri.
590/3	8600-00	"
591/7	3035-00	"
175/1	4148-00	"
266/2	14265-00	"
House No.18 264-00 Resi.		
Kodharu No.17 218-00 Kodhara		
41,052 sq.mts.		Total

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When aforesaid area of 41052 sq.mts. is excluded, the total area of 9915 sq.mts. of land bearing Survey No. 55 is required to be considered for the purpose of deciding whether there is excess holding. It may be stated that on 17/11/1987, vide Order No. 413, the D.I.L.R. Surat corrected the area of the land S.No.55 and determined the same to be of 9510 sq.mts. and not 9915 sq.mts. It may be mentioned that there is a Farm House covering the area of 163.11 sq.mts. of land. That much land covered by construction has to be excluded. Further 60% of the said area is also required to be excluded alongwith additional appurtenant land where on no construction is permitted, owing to SUDA Regulations. Taking into consideration this aspect under the head Farm House, which was very much thereon in the year 1976, the area of 905.11 sq.mts. will have to be deducted. The High Way is also passing touching that land and therefore

Road Margin Land to the tune of 922.65 sq.mts. will have to be excluded because on that land construction is not in law permitted. Through the land in question, the canal passes, and therefore, the margin land covered by the Canal is also required to be excluded. The same when assessed, came to 2438 sq.mts. of land. The High Tension overhead Line for the purpose of providing electric energy to different areas is also passing through this land. As per Electricity Rules, the land covered by the line and some on both the sides, is required to be excluded as no construction thereon is permitted, and that area comes to 854 sq.mts. Thus total area which is required to be excluded from the total area of 9510 sq.mts. of S.No.55 comes to 5120.16 sq.mts. On the same being excluded, the area of 4389.84 sq.mts. remains on hand.

6. The petitioner and his two sons in law constitute three units. Each one is entitled to exemption of 1500 sq.mts. of land. It may be stated that the areas of 4500 sq.mts. of land to be excluded is more than the above area of 4389.84 sq.mts. of land from which it is to be excluded, meaning thereby that the petitioner is having 110.16 sq.mts. of land less than the ceiling limits. It, therefore, follows that in this case, there is no land in excess of the ceiling limits. The competent authority rightly held that the petitioner was holding less than the land he was entitled to and consequently rightly filed the form filled in under Sec.6(1) of the Act. The Government had no reason to interfere with the order. However it review as aforesaid which can be said to be arbitrary and erroneous. The findings and order of the Government based on erroneous calculation and contrary to above stated position of law cannot be allowed to stand; the same are required to be turned down.

7. In view of the matter, two ways are opened either to allow the petition and remand the matter for afresh consideration or to quash and set aside the order passed by the Government and grant relief as prayed. Ordinary remand should be avoided and court must try to finally set at rest the dispute raised before it, unless, of course, there is a good cause to remand the matter. Remand can be ordered if evidence or materials on record is insufficient and more evidence is required, or further inquiry or hearing is necessary. It can be if material issue is not framed or is overlooked or the hearing is conducted illegally or illegal procedure is adopted. If reasonable opportunity to submit is not given to the party, order remanding the matter can be passed. For

correct decision, the matter can be remanded. In the case on hand neither of the causes is operating for remanding the case. There are sufficient materials on record for just and correct decision. Hence to remand the matter would amount to put to the parties to undue hardships which law hates. With the result, the submission advanced on behalf of the State cannot be acceded to.

8. For the aforesaid reason, the petition is required to be allowed and is hereby allowed and the order dt.19/6/1989 passed by the Joint Secretary, Revenue Department, Gujarat State, copy of which is produced at Annexure C, declaring that the petitioner holds 1493.38 sq.mts. of land in excess of the ceiling limits, is hereby quashed and set aside, and the order passed by the competent authority on 27th April, 1987, copy of which is produced at Annexure A, is hereby restored; and it is hereby declared that the petitioner is not holding the land in excess of the ceiling limits. No costs in the circumstances of the case. Rule is made absolute to the aforesaid extent.

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